

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 03-005-16-1-5-01760-16
03-005-17-1-5-00784-17
Petitioners: Richard C. & Nancy L. Nyers
Respondent: Bartholomew County Assessor
Parcel: 03-96-09-120-000.253-005
Assessment Years: 2016 & 2017

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioners initiated their 2016 and 2017 assessment appeals with the Bartholomew County Assessor on July 1, 2016, and May 8, 2017, respectively.
2. On August 12, 2016, the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for the 2016 assessment year denying the Petitioners any relief.
3. On May 25, 2017, the Petitioners signed a Standard Form Agreement to forego a PTABOA hearing for the 2017 assessment year.
4. The Petitioners timely filed Petitions for Review of Assessment (Form 131s) for each year and elected the Board's small claims procedures.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated hearing on November 29, 2018. She did not inspect the property.
6. Certified tax representative Milo E. Smith appeared for the Petitioners and was sworn. County Assessor Lew Wilson and local government representative Virginia Whipple appeared for the Respondent and were sworn. Certified tax representative Dean Layman was sworn as a witness for the Respondent.
7. The property under appeal is an attached row-type single-family residence located at 5174 Sanibel Drive in Columbus.
8. For the 2016 assessment year, the PTABOA determined the total assessment was \$388,500 (land \$50,000 and improvements \$338,500). For the 2017 assessment year, the parties agreed the total assessment was \$385,100 (land \$50,000 and improvements \$335,100).

9. The Petitioners requested a total assessment of \$374,000 for 2016. And a total assessment of \$370,800 for 2017.
10. The official record for this matter includes the following:
 - a. A digital recording of the hearing,
 - b. Exhibits:

Petitioners Exhibit 1:	2016 subject property record card,
Petitioners Exhibit 2:	2017 subject property record card,
Petitioners Exhibit 3:	Department of Local Government Finance (DLGF) Memorandum regarding annual adjustments (trending) guidance, dated February 4, 2009,
Petitioners Exhibit 4:	A copy of the DLGF's formula for calculating the neighborhood factor,
Petitioners Exhibit 5:	Spreadsheet including the parcel number, owner, address, neighborhood, sale date, sale price, assessed values for 2016, 2017, and 2018, and neighborhood factors for all the "villas" located in the Villas of Stonecrest (Stonecrest),
Petitioners Exhibit 6:	Copy of the 2013 International Association of Assessing Officers' (IAAO) Standard on Ratio Studies, Appendix D page 56,
Petitioners Exhibit 7:	Two pages from the DLGF's website entitled <i>Neighborhood Factor Example and Cost Approach Neighborhood Factor Problem</i> ,
Petitioners Exhibit 8:	Spreadsheet of Stonecrest properties with the heading <i>Assessors goal stated at latest meeting in the Club House was to achieve an assment (sic) equal to 98% of original cost</i> ,
Petitioners Exhibit 9:	Spreadsheet listing Stonecrest sales used for the development of the Petitioners' neighborhood factor for 2016,
Petitioners Exhibit 10:	Spreadsheet listing Stonecrest sales used for the development of the Petitioners' neighborhood factor for 2017.
Respondent Exhibit A:	Curricula Vitae for Virginia Whipple and Lew Wilson,
Respondent Exhibit B:	"Statement of Professionalism,"
Respondent Exhibit C:	2015 subject property record card,
Respondent Exhibit D:	2016 subject property record card,
Respondent Exhibit D.1:	2017 subject property record card,
Respondent Exhibit E:	Photograph of the subject property,
Respondent Exhibit F:	Sales disclosure form dated April 14, 2014,
Respondent Exhibit G:	Comparison of sale prices to assessed values for Stonecrest properties,

- Respondent Exhibit H: Paired sales analysis and time adjustment calculation for the subject property including requested assessed values,
- Respondent Exhibit I: E-mail from Joe Thompson to Mr. Wilson dated August 8, 2018.
- Respondent Exhibit J: 2017 property record cards for the properties utilized in Petitioners' Exhibits 9 and 10.
- c. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) these findings and conclusions.

Contentions

11. Summary of the Petitioners' case:

- a. The subject property is assessed too high. The Assessor engaged in sales chasing because he based the assessments on the property's sale price. Sales chasing results in assessments that are not uniform. *Smith argument.*
- b. According to the Assessor, his goal was to achieve an assessment equal to 98% of each home's original cost. The only way to accomplish that is to use the individual sales, which amounts to "sales chasing and violates all the laws, rules and regulations of the IAAO and the DLGF" and results in assessments that are not uniform and equal. *Smith argument; Pet'r Ex. 8.*
- c. The subject property is "one of 141 condominiums" located in the Stonecrest neighborhood. All of the units were constructed by the same builder with similar quality and materials and the option to upgrade. The Assessor has applied neighborhood factors based on the cost of each individual unit rather than being applied to the entire neighborhood. The neighborhood factors for the individual units range from .99 to 1.87. There are over twenty different neighborhood factors in the Stonecrest neighborhood. The subject property's 1.40 factor is not uniform with the other properties. The Assessor failed to present any evidence to support this neighborhood factor. *Smith testimony; Pet'r Ex. 1, 2, 5.*
- d. In an effort to calculate accurate assessments, the Petitioners presented a listing of 2015 and 2016 sales in the Stonecrest neighborhood. The sales ranged from \$111 per square foot to \$170 per square foot and there was a "wide range in the assessments" as well. In an attempt to obtain a uniform and equal assessment, the Petitioners looked to the "median" sales, and this resulted in a "median factor" of 1.34. In determining this factor the Petitioners used the neighborhood factors the Assessor had applied to calculate a median. Although "it is a reach" it was the Petitioners' intentions to arrive at just one factor for the entire neighborhood. The application of the 1.34 neighborhood factor would lower the subject property's 2016 assessment to \$374,000. For 2017, the application of a 1.34 neighborhood factor would result in an assessment of \$370,800. *Smith testimony; Pet'r Ex. 9, 10.*

12. Summary of the Respondent's case:

- a. This appeal is not about whether the Stonecrest neighborhood was properly assessed but whether the subject property was properly assessed. The Petitioners are arguing methodology when the appeal is “about the market value-in-use” of the subject property. Simply challenging the methodology used to assess a property typically does not suffice to rebut the presumption that the assessment is correct. *Whipple argument.*
- b. The Assessor did not engage in “sales chasing.” Because the properties in Stonecrest sell for vastly different amounts, using a neighborhood factor in the assessment did not account for the variances in sale price. The sale prices vary widely because of the amenities and upgrades available in each unit at the time of its construction. Thus the Assessor developed a method to assess the properties at approximately 98% of their sale prices. In applying the sale price to each property, the assessments are equitable and uniform. *Whipple argument; Resp't Ex. I.*
- c. The Assessor did not perform any kind of ratio study on the neighborhood. The percentages listed in the column for the neighborhood factor on the property record card are not a neighborhood factor, but a “factor” the Assessor applied “to arrive at the sale price of the property.” *Whipple testimony; Resp't Ex. C, D, D.I.*
- d. The subject property sold for \$396,927 on April 14, 2014. The Assessor found the only way to arrive at equitable values for the subject property's neighborhood was to use the builder's cost approach and trend it to the appropriate date using a paired sales analysis. The Assessor presented a list of over twenty sales within Stonecrest that sold twice, and he relied on these sales to trend the subject property's 2014 sale. The paired sales analysis indicates a median increase of .0020 per month. Twenty-three months elapsed between the subject property's 2014 sale date and the 2016 assessment date. The paired sales analysis for 2016 was adjusted by 0.0456 to arrive at an adjusted sale price of \$415,027. Thirty-five months elapsed between the 2014 sale date and the 2017 assessment date. The subject property's adjusted 2017 sale price using the paired sales analysis equates to \$424,474. The Assessor requests the Board apply these trended values to the assessments at appeal. *Whipple testimony; Resp't Ex. F, H.*
- e. The Petitioners evidence is flawed. The evidence presented by the Petitioners is used to determine “a co-efficient of price related bias rather than the neighborhood factor.” Furthermore the data used to determine their purported neighborhood factor is from 2018, rather than 2016 and 2017 and not applicable here. *Whipple argument (referencing Pet'r Ex. 6, 9, 10); Resp't Ex. J.*

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp.*

Ass'r, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

14. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
15. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the parties agree the burden is on the Petitioners for the 2016 assessment year. Thus according to Ind. Code § 6-1.1-15-17.2 the Petitioners have the burden to prove the 2016 assessment is incorrect. The burden for the 2017 assessment year will ultimately be determined by the Board’s finding for the prior year.

Analysis

17. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
18. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2016 and 2017 assessments, the valuation date was January 1, 2016, and January 1, 2017, respectively. *See* Ind. Code § 6-1.1-2-1.5.

2016 Assessment

19. The Petitioners had the burden to prove the 2016 assessment was incorrect. The Petitioners mainly focused on the neighborhood factors within Stonecrest, arguing they were improperly calculated and did not comply with the Guidelines. A taxpayer who focuses on alleged errors in applying the Guidelines misses the point of Indiana's new assessment system. *O'Donnell*, 854 N.E.2d at 94-95. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d at 678 (Ind. Tax Ct. 2006). The only market-based evidence offered by the Petitioners was a list of sales in the Stonecrest neighborhood in an attempt to establish "an accurate neighborhood factor" and to prove the Assessor's neighborhood factors were improperly calculated. The Petitioners' focus on neighborhood factors failed to establish the actual market value-in-use for the subject property. The Petitioners' main argument is that the assessments are not uniform and equal because the Assessor used several different neighborhood factors to assess them.
20. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla Dist. Co. App 1994)).
21. When a ratio study shows that a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so "they bear the same relationship of assessed value to market value as other properties within that jurisdiction." *Thorsness v. Porter Co. Ass'r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs*, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1040 (Ind. 1998).
22. Similar to the taxpayer in *Westfield Golf*, the Petitioners' argument is flawed. Here, the Petitioners failed to offer a ratio study that shows the subject property is assessed above the common level of assessment. Instead, the Petitioners' argument focused on the

miscalculation of the neighborhood factor, one aspect of the overall assessment. This evidence is not sufficient to demonstrate the 2016 assessment violated the requirements of uniformity and equality. The Petitioners failed to offer any other type of evidence to show that the Assessor's methodology resulted in an assessment that does not accurately reflect the subject property's market value-in-use. For these reasons, the Petitioners failed to make a prima facie case showing a lack of uniformity and equality in assessments.

23. The Petitioners also argued the assessment should be lowered because the Assessor's actions amounted to "sales chasing," an act the Petitioners claim is prohibited by Indiana's assessing guidelines.
24. "Sales chasing" or "selective reappraisal" is the "practice of selectively changing values for properties that have been sold, while leaving other values alone." *Big Foot Stores, LLC v. Franklin Twp. Ass'r*, 818 N.E.2d 623 (Ind. Tax Ct. 2009) (citing *County of Douglas v. Nebraska Tax Equalization and Review Comm'n*, 635 N.W.2d 413, 419 (Neb. 2001)). Here, the Respondent testified that all of the assessed values of the homes in the Stonecrest addition were based on their construction sale prices. According to the Respondent, this method was the best because it accounted for interior amenities and upgrades that were not visible from the exterior. There is no evidence the subject property's assessment increased while other properties' values remained unchanged. Nor did the Petitioners present any evidence that other properties were not similarly assessed close to their market values. Absent a showing the subject property was assessed differently than other similar properties, the Petitioners have failed to raise any cognizable claim.
25. The Board notes that assessing properties at or near their actual market values is the goal of Indiana's market value-in-use system. *See P/A Builders & Developers v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*.")) For these reasons, the Petitioners failed to make a prima facie case for a reduction in their 2016 assessment.

2017 Assessment

26. The burden remains with the Petitioners for 2017 and they presented the same neighborhood factor evidence, although it was trended to the 2017 assessment year. For the same reasons as previously stated, the Petitioners failed to make a prima facie case for a reduction in their 2017 assessment.

Respondent's Evidence

27. This does not end the Board's inquiry because the Respondent requested the assessments be increased. The Board now turns to the Respondent's evidence.

2016 Assessment

28. In an effort to justify increasing the 2016 assessment, the Respondent focused primarily on the April 14, 2014, sale of the subject property. The Respondent is correct in asserting that a property's sale price may be compelling evidence of its true tax value, at least if the sale was at arm's length and other indicia of a market-value sale were present. The manual provides the following definition of "market value":
- [T]he most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed term, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.
29. The Petitioners did not attempt to argue the sale was anything less than a true market-value sale and nothing on the sales disclosure form indicated otherwise. However, because the sale was roughly 23-months removed from the January 1, 2016, valuation date, it was necessary for the Respondent to explain how the 2014 purchase price was relevant to the 2016 valuation date. *See Long*, 821 N.E.2d at 471 (stating that any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, that required valuation date).
30. In an effort to support the use of the original purchase price, the Respondent relied on a paired sales analysis to time-adjust the sale price. To accomplish this the Respondent offered an analysis of twenty-four homes in the Stonecrest neighborhood that had resold since their original construction date. In doing so, the Respondent determined a median price difference per month at .0020. The Respondent multiplied the 23-month difference by 0.0456 resulting in an adjusted value of \$415,027. However, several problems with the paired sales analysis that undermine its credibility.
31. First, although paired sales can be used to estimate a time adjustment, properties included in the analysis should be similar to the subject property in terms of location, age, and physical characteristics. This ensures that they are generally representative of the subject property's market, and therefore, are an accurate reflection of the pricing pressures affecting the subject property's market value-in-use. Here, the Respondent failed to establish that any of the paired sales were actually similar to the subject property. While all of the properties included in the Respondent's analysis are from the subject property's neighborhood, the Board can at least infer that the properties are similarly located. Nevertheless, the Respondent failed to offer any testimony regarding the various differences in interior amenities included in the properties, even though the Respondent testified about how those amenities differ and influence each individual home's price immensely. Moreover, without additional supporting documentation there is no way of knowing whether the properties used in the paired sales analysis had been remodeled, upgraded, or what their interior conditions were at the time they sold. The homes listed

in the paired sales analysis differed in sales price by as much as \$302,500. Such a wide variation in sale prices is indicative that all of the properties could not have been truly comparable to the subject property. The Respondent also failed to provide any supporting documentation for the paired sales, such as their property record cards or sales disclosure forms, which might reveal whether the properties have similar ages, amenities, or physical characteristics. This lack of evidence leaves the Board with insufficient information to discern even the most basic characteristics of the properties.

32. Further, the Respondent testified that all the properties used in the analysis were sold as “arm’s length transactions.” However, this assertion cannot be confirmed, again, because of the Respondent’s failure to offer supporting documentation for any of the paired sales. Thus, the Board is unable to determine if any of the sales prices improperly included the value of personal property, financing, or leases, or whether they were truly open-market, arm’s length transactions.
33. Finally, the individual sale dates of the paired sales ranged from July 10, 2009, to June, 28, 2018. However, the period at issue for the 2016 assessment spans the time between the original purchase date by the Petitioners on April 14, 2014, and January 1, 2016. The Respondent failed to establish how paired sales analysis from such a broad time span is probative for the relative time differential. Furthermore, the Respondent failed to explain how this rather basic paired sales analysis complies with generally accepted appraisal principles for time adjustments. Given the numerous issues discussed herein, the Respondent failed to show that the paired sales analysis helps with a reliable indication of the subject property’s market value-in-use as of January 1, 2016.
34. As part of making a prima facie case, “it is the taxpayer’s duty to walk the [Indiana Board and this] Court through every element of [its] analysis.” *Long*, 821 N.E.2d at 471 (quoting *Clark v. Dep’t of Local Gov’t Fin.*, 779 N.E.2d 1277, 1282 n.4. (Ind. Tax Ct. 2002)). This requirement applies equally to an Assessor bearing the burden. While the Respondent attempted to rely on the subject property’s original purchase price from 2014, the gap in time between the purchase date and the 2016 valuation date is more than twenty months. The Respondent’s paired sales analysis failed to credibly demonstrate how the original purchase price is relevant to the January 1, 2016, valuation date. Thus, the original purchase price is not probative of the market value-in-use of the subject property. Consequently, the Board finds that the Respondent failed to offer enough probative evidence supporting his request for an increase in the 2016 assessment. Accordingly, the 2016 assessment is to remain the same.

2017 Assessment

35. For the 2017 assessment, the Respondent presented the same paired sales analysis as he did for the 2016 assessment year, although it was adjusted for the 2017 assessment year. For the same reasons as previously stated, the Respondent failed to make a prima facie case that the 2017 assessment should be increased. Therefore the 2017 assessment is to remain the same.

Conclusion

36. The Petitioners had the burden for both years under appeal. For 2016, the Petitioners failed to meet their burden of proof that the assessment should be lowered. The Respondent requested the assessment be increased, but also failed to meet his burden. Thus, the 2016 assessment will remain the same. For 2017, the Petitioners again failed to meet their burden of proof. The Respondent requested a value higher than the current 2017 assessment but failed to meet his burden. Thus, the 2017 assessment must remain the same.

Final Determination

In accordance with the above findings and conclusions, the 2016 and 2017 assessments will remain unchanged.

ISSUED: February 27, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.